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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,622	03/22/2001	Mark E. Cannon	CANN-0208	3984

7590

11/04/2003

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EXAMINER

FLEURANTIN, JEAN B

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/814,622

Applicant(s)

CANNON, MARK E.

Examiner

Jean B Fleurantin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12,14-22 and 88-118 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12,14-22 and 88-118 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Amendment

1. Claims 88-118 are added.

Claims 12, 14-22 and 88-118 remain pending for examination. Examiner discusses the limitations of claims 98-118 in the following rejection.

Response to Applicant' Remarks

2. Applicant's arguments filed on August 18, 2003 with respect to claims 12, 14-22 and 88-118 have been considered but are not persuasive because of the following:

- A. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 98-118 are rejected under 35 U.S.C. § 101 because they are directed to non-statutory subject matter, specially, as directed to an abstract idea.

The Supreme Court has repeatedly held that abstractions are not patentable. "An idea of itself is not patentable" "Rubber-Tip Pencil Co. v. Howard, 20 Wall. 498, 507. "Phenomena of nature, though just discovered, mental processes, abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work" Gottschalk v. Benson, 175 USPQ 673, 675 IS Ct 1972). "It is a common place: that laws of nature, physical phenomena, and abstract ideas are not patentable subject matter" "Parker v. Flook, 197 USPQ 193, 201 (S Ct 1978).

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Data Structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are neither physical "things" nor statutory processes. Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the medium which permit the data structure's functionality to be realized, and is statutory. Thus, the claims are rejected as being non-statutory as indicated.

Claim Rejections - 35 USC § 102

B. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,717,923 issued to Dedrick ("hereinafter Dedrick").

As per claim 15, Dedrick discloses "a program product comprising an advertising plan optimization mechanism" as the content received by the metering server 14 from the publisher may include content titles that summarily describe the contents and are stored in the index databases 35 of the metering servers 14, (see col. 13, lines 36-39), "the advertising plan optimization mechanism iteratively modifying an advertising plan to achieve one of an improved

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and an optimal advertising plan” as the end user/advertiser may also include an availability schedule within the calendar database 72 which allows an end user who consumes the advertisement to view and request the service at a specified date and time, in which the scheduling process 74 allows the end user to access the calendar database 72 to view and schedule a time, (see col. 14, lines 33-42), and column 14, lines 45-51; and

“signal bearing media bearing the advertising optimization mechanism” as the content database may reside within the publisher unit or be located at a remote location such as the metering server or a regional server that services a plurality of metering servers, the software tools may include a hypertext oriented mark up language that routes distributed end users to the content databases, (see col. 4, lines 18-23).

As per claim 16, the limitations of claim 16 are rejected in the analysis of claim 15, and this claim is rejected on that basis.

As per claim 17, Dedrick discloses, “wherein the signal bearing media comprises recordable media”,(see col. 4, lines 44-48).

As per claim 18, Dedrick discloses, “wherein the plurality of indices which are utilized by the advertising optimization mechanism to iteratively modify the base advertising schedule”, (see col. 14, lines 33-34).

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As per claim 19, Dedrick discloses, “wherein the plurality of indices comprises at least one of an exposure valuation index, audience valuation index, an exposure recency index, a response index and a cost index” as the tools may also allow the publisher to associate a plurality of cost types and corresponding cost values with the same content of information, (see col. 11, lines 33-34).

C. Claims 98-118 are rejected under 35 U.S.C. 102(b) as being anticipated by Related Art - Applicant background invention section, (“hereinafter Related Art”).

As per claim 98, Related Art discloses, “a method of calculating the value of exposure of an audience member to an advertisement” (see page 4, lines 16-19), “determining an exposure value representing the exposure of the audience member to the advertisement” as to effectively determine which shows are most favored by the desired target market, advertising agencies and businesses have utilized the services by various different research and consulting firms, (see page 3, lines 7-11);

“determining a characteristics value for the audience member representing at least one of demographic characteristics and lifestyle characteristics of the audience member” as research firms try to predict which viewers will be most receptive to various advertising campaigns, based on the demographic make-up of the viewing population, (see page 3, lines 11-15); and

“combining the exposure value with the characteristics value to produce a combined value of exposing the audience member to the advertisement” as to create an optimal campaign which effectively utilizes a finite combination of resources to communicate to the target audience, (see page 3, lines 18-19).

As per claims 99 and 100, Related Art discloses, “wherein the step of determining an exposure value comprises using a weighted effective frequency method to determine the exposure value”, (see page 3, lines 16-19).

As per claim 101, in addition to the discussion in claim 98, Related Art further discloses “combining the exposure valuation with the audience valuation for each of the plurality of audience members to produce an audience/exposure value for the advertisement for each audience member” as most businesses and companies the potent power of the television when it comes to attracting and retaining consumers for their various products and services, television has the capability to transmit virtually any message to million of people in an instant, television advertising is believed to be one of the most important advertising vehicles available for reaching a desired consumer population, (see pages 1-2, lines 19-5);

“combining the audience/exposure values for each of the plurality of audience members” as most businesses and companies the potent power of the television when it comes to attracting and retaining consumers for their various products and services, television has the capability to transmit virtually any message to million of people in an instant, television advertising is believed to be one of the most important advertising vehicles available for reaching a desired consumer population, (see pages 1-2, lines 17-5); and

“adjusting the combined audience/ exposure values using one or more of a recency index, a response index, and a cost index to calculate the score for the advertisement” as broadcast

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television advertising revenue is estimated to be in excess of 30 billion of dollars per year, (see page 2, lines 11-14), and page 5, lines 7-8.

As per claim 102 and 103, Related Art discloses, “wherein the step of determining the separate exposure valuation comprises using forecasted exposure estimates to determine the exposure valuation for the audience member”, (see page 3, lines 16-19).

As per claim 104, in addition to the discussion in claim 101, Related Art further discloses “assigning a separate characteristics value for at least one of a plurality of demographic characteristics for the audience member”, (page 3, lines 12-13).

As per claim 105, Related Art discloses, “wherein the step of combining the separate characteristics values comprises multiplying the values together”, (page 3, lines 7-9).

As per claims 106 and 107, Related Art discloses, “wherein the step of determining the separate exposure valuation comprises using a weighted effective frequency method to determine the exposure valuation”, (see page 3, lines 16-19).

As per claims 108 and 109, Related Art discloses, “wherein the step of determining the separate exposure valuation comprises using an average frequency method to determine the exposure valuation for each of the plurality of audience members to the advertisement”, (page 3, lines 16-19).

As per claims 110, 111 and 118, Related Art discloses, “wherein the step of adjusting the combined audience/exposure values comprises using at least one of a recency index, a response index, and a cost index to calculate the score” as broadcast television advertising revenue is estimated to be in excess of 30 billion of dollars per year, (see page 2, lines 11-14).

As per claims 112 and 113, Related Art discloses, “wherein the step of combining the audience/exposure values comprises summing the audience/exposure values for each of the plurality of audience members for the advertisement” as to create an optimal campaign which effectively utilizes a finite combination of resources to communicate to the target audience, (see page 3, lines 18-19).

As per claim 114, in addition to the discussion in claim 101, Related Art further discloses, “a method of modifying an advertising plan to achieve an improved plan”, as these advertising campaigns are most often the result of educated estimates, (see page 3, lines 16-17),

“selecting at least one advertisement from the advertising plan for removal from the plan based upon the score” as acceptable method for evaluating, scoring and strategy with other, (page 4, lines 12-14); and

“removing the selected at least one, advertisement from the advertising plan” as these firms purportedly have the ability to accurately identify which segment of the consumer population is most likely to be viewing which television program at any given time, (page 3, lines 9-11).

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As per claims 115 and 116, Related Art discloses, “wherein the step of selecting at least one advertisement from the advertising plan for removal comprises a user interactively removing the at least one advertisement from the advertising plan” (see page 2 lines 15-17).

As per claim 117, in addition to the discussion in claim 101, Related Art further discloses, “determining a separate score for each advertisement being considered for inclusion in the advertising plan” as acceptable method for evaluating, scoring and strategy with other, (page 4, lines 12-14); and

“adding the at least one selected advertisement to the advertising plan” as television advertising is believed to be one of the most important advertising vehicles available for reaching a desired consumer population, (see page 2, lines 3-5).

Claim Rejections - 35 U.S.C. § 103

D. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 12, 14 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,717,923 issued to Dedrick ("hereinafter Dedrick") in view of 'Data Mining Techniques to Gain Insight Into Your Data - 12/1995' - Cipolla ("hereinafter Cipolla").

As per claim 12, Cipolla discloses "a computer system for optimizing an advertising schedule" as the end user/advertiser may also include an availability schedule within the calendar database 72 which allows an end user who consumes the advertisement to view and request the service at a specified date and time, the scheduling process 74 allows the end user to access the calendar database 72 to view and schedule a time, (see col. 14, lines 33-42), the method comprising "a CPU", (see col. 3, lines 21-25);

"a memory coupled to the CPU" as regional content database server 21 and a single yellow page server 22, (see col. 3, lines 27-28);

"a database residing in the memory" (see col. 9, lines 28-31), "the database containing a plurality of audience member data, the plurality of audience member data indicating exposure of each corresponding audience member to at least one of media and advertisements" as the yellow page server 22 receives and stores electronic advertising information from advertiser 18 in the advertising database 70, the advertising database 70 may contain electronic information that is generated by advertisers or by the end users, (see col. 14, lines 16-20);

"user interface residing in the memory and being executed by the CPU", as the graphical interface user also allows the user to receive inquiries, request information and consume information by viewing, storing, (see col. 3, lines 62-67);

“wherein the interface provides a plurality of choices for improving and optimizing an advertising plan for presentation to a plurality of audience members according to a plurality of indices” as the adviser 18 is provided with a graphical user interface which allows the adviser 18 to select certain consumer variables from a set of consumer variables and associate the selected variables with specific objects or field within electronic information, (see col. 4, lines 34-40). Dedrick does not explicitly disclose a database mining engine residing in the memory. However, Cipolla discloses a data mining process and process to transform the data into information (see pages 18 and 19, lines 39-47 and 33-38). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Dedrick and Cipolla with a database mining engine residing in the memory. Such modification would allow the combined teachings of Dedrick and Cipolla to provide better information for decision making, (see page 18, line 45).

As per claim 14, Dedrick discloses, “wherein the plurality of indices includes at least one of an exposure valuation index, audience valuation index, an exposure recency index, a response index and a cost index” as the tools may also allow the publisher to associate a plurality of cost types and corresponding cost values with the same content of information, (see col. 11, lines 33-35).

As per claims 20-22 and 88, Dedrick discloses the claimed subject matter except the claimed the data conversion mechanism comprising a mechanism for converting data from a first data format to a second data format. However, Cipolla discloses a process to transform the data

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into information, (see page 19, lines 33-38). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combined teachings of Dedrick and Cipolla with data conversion mechanism comprising a mechanism for converting data from a first data format to a second data format. Such modification would allow the teachings of Dedrick and Cipolla to provide better information for decision making, (see page 18, line 45).

As per claims 89 and 90, Dedrick discloses, “wherein the audience member data indicate exposure to advertisements on television”, (see col. 5, lines 50-59).

As per claims 91, 92 and 95, Dedrick discloses, “wherein the audience member data indicate exposure to advertisement on at least one radio, magazines, newspapers, world wide web, printed materials and electronic media”, as these provides may include advertisers and other information publishers such as newspaper and magazine publishers, (see col. 1, lines 24-26).

As per claims 93 and 94, Dedrick discloses, “wherein the audience member data indicate exposure to advertisements on at least two media types”, (see col. 1, lines 24-26).

As per claim 96, Dedrick discloses, “wherein the media exposure records comprise television viewing records”, (see col. 4, lines 44-48).

As per claim 97, Dedrick discloses, “wherein the media exposure records comprise television viewing records produced by A.C. Nielson”, (see col. 4, lines 44-48).

Remarks

3. In response to applicant’s argument on page 13, that the Dedrick does not disclose iteratively modifying any advertising plan” and “Dedrick reference does not anticipate independent claim 15”. It is respectfully submitted that Dedrick reference discloses the claimed invention as follow: Dedrick discloses “a program product comprising an advertising plan optimization mechanism” as the content received by the metering server 14 from the publisher may include content titles that summarily describe the contents and are stored in the index databases 35 of the metering servers 14, (see col. 13, lines 36-39), “the advertising plan optimization mechanism iteratively modifying an advertising plan to achieve one of an improved and an optimal advertising plan” as the end user/advertiser may also include an availability schedule within the calendar database 72 which allows an end user who consumes the advertisement to view and request the service at a specified date and time, in which the scheduling process 74 allows the end user to access the calendar database 72 to view and schedule a time, (see col. 14, lines 33-42), and column 14, lines 45-51; and

“signal bearing media bearing the advertising optimization mechanism” as the content database may reside within the publisher unit or be located at a remote location such as the metering server or a regional server that services a plurality of metering servers, the software tools may include a hypertext oriented mark up language that routes distributed end users to the content databases, (see col. 4, lines 18-23).

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In response to applicant's argument on page 14, that there is no suggestion to combine the references Dedrick in view of Cipolla, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Dedrick discloses the claimed subject matter except the claimed the data conversion mechanism comprising a mechanism for converting data from a first data format to a second data format. However, Cipolla discloses a process to transform the data into information, (see page 19, lines 33-38). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combined teachings of Dedrick and Cipolla with data conversion mechanism comprising a mechanism for converting data from a first data format to a second data format. Such modification would allow the teachings of Dedrick and Cipolla to provide better information for decision making, (see page 18, line 45).

Although the claims are interpreted in light of the specification, the limitations from the specification are not in read into the claims. See *In re Van Genus*, 988 F.D 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

5. Any inquiry concerning this communication from examiner should be directed to Jean Bolte Fleurantin at (703) 308-6718. The examiner can normally be reached on Monday through Friday from 7:30 A.M. to 6:00 P.M.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Mrs. KIM VU can be reached at (703) 305-8449. The FAX phone numbers for the Group 2100 Customer Service Center are: *After Final* (703) 746-7238, *Official* (703) 746-7239, and *Non-Official* (703) 746-7240. NOTE: Documents transmitted by facsimile will be entered as official documents on the file wrapper unless clearly marked "***DRAFT***".


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 2100 Customer Service Center receptionist whose telephone numbers are (703) 306-5631, (703) 306-5632, (703) 306-5633.



Jean Bolte Fleurantin

2003-11-01

JBF/



SHAHID ALAM
PRIMARY EXAMINER